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In the Supreme Court of the United States

OCTOBER TERM, 1989

GARY STANGLER, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES OF MISSOURI, PETITIONER

v.

MARIETTA DARLING, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

KENNETH W. STARR
Solicitor General
STUART M. GERSON
Assistant Attorney General
ANTHONY J. STEINMEYER
MICHAEL E. ROBINSON
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTION PRESENTED

Whether the court of appeals correctly concluded that Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 U.S.C. 1383c(b) (Supp. V 1987)) requires "Section 209(b) States"—States that do not use receipt of Supplemental Security Income (SSI) as an automatic trigger for Medicaid eligibility—to disregard certain 1984 increases in Social Security benefits in determining the Medicaid eligibility of disabled widows and widowers.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is reported at 878 F.2d 1069. The opinion of the district court (Pet. App. A21-A41) is reported at 685 F. Supp. 1125.

JURISDICTION

The judgment of the court of appeals was entered on June 28, 1989. A timely petition for rehearing was denied on September 7, 1989. The petition for a writ of certiorari was filed on December 4, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Medicaid program, established in 1965 under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) "provid[es] federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris* v. *McRae*, 448 U.S. 297, 301 (1980). Initially, Medicaid required participating States to provide medical assistance to persons who received cash payments under one of four welfare programs established elsewhere in the Social Security Act. These programs were Old Age Assistance, Aid to Families with Dependent Children (AFDC), Aid to the Blind, and Aid to the Permanently and Totally Disabled. Persons receiving aid under one of these four programs were referred to as the "categorically needy." See *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 37-38 & n.1 (1981).

In 1972, Congress restructured the non-AFDC welfare programs and replaced three of the four "categorical assistance" programs with a new program called Supplemental Security Income for the Aged, Blind and Disabled (SSI), 42 U.S.C. 1381 *et seq.* *Schweiker* v. *Gray Panthers*, 453 U.S. at 38. Under SSI, the federal government assumed responsibility for both funding payments and setting standards of need. Congress retained the requirement that all recipients of categorical welfare assistance – now including the new SSI program – were also entitled to Medicaid. Because the federal SSI eligibility standards were more lenient than the previous eligibility standards in some States, the number of individuals eligible for Medicaid in some States would have increased significantly. *Ibid.*

Fearing that States would withdraw from the Medicaid program because of the expanded coverage, Congress enacted what became known as the "Section 209(b) option." 42 U.S.C. 1396a(f). Under this option, States can opt out

of the requirement of providing Medicaid automatically to persons who receive SSI and elect instead to provide Medicaid assistance only to those individuals who would have been eligible under the state Medicaid plan in effect on January 1, 1972. *Schweiker*, 453 U.S. at 38-39. The 209(b) option thus "allows the States to avoid the effect of the link between the SSI and Medicaid programs." *Herweg v. Ray*, 455 U.S. 265, 268 (1982). As a consequence, under the Medicaid program, States are either "SSI States" or "209(b) States," depending upon whether they provide Medicaid assistance to all SSI recipients or only to those individuals who meet the State's own eligibility standards. *Ibid.*

States exercising the 209(b) option were nevertheless required to adopt a "spend-down" provision. 42 U.S.C. 1396a(f). "Under it, an individual otherwise eligible for SSI but whose income exceeded the state standard could become eligible for Medicaid when that part of his income in excess of the standard was consumed by expenses for medical care." *Schweiker*, 453 U.S. at 39 n.5.

2. In 1983, Congress enacted legislation, effective in 1984, to increase the level of benefits paid to disabled widows and widowers under Title II of the Social Security Act. This increase had the effect of causing some disabled widows and widowers to lose their eligibility for Medicaid because they no longer received SSI. Pet. App. A6.[1] In response to this problem, Congress enacted Section 12202 of the Consolidated Omnibus Budget Reconciliation Act

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[1] It also caused some individuals to lose their eligibility for State Supplementary Payments (SSP). States may provide an SSP, in addition to SSI, to individuals whose incomes do not exceed the State's standard for such income supplements. 42 U.S.C. 1382e. States that pay SSPs have the additional option of providing Medicaid to SSP recipients. 42 U.S.C. 1396a(a)(10)(A)(ii)(IV). Thus, in some States, loss of eligibility for SSP payments also meant loss of eligibility for Medicaid.

of 1985 (COBRA), which provided that a person who lost his eligibility for SSI benefits by virtue of the 1984 increase for disabled widows and widowers is to be deemed an SSI recipient for purposes of determining Medicaid eligibility. Pub. L. No. 99-272, 100 Stat. 290-291, codified at 42 U.S.C. 1383c(b) (Supp. V 1987).[2]

The Department of Health and Human Services (HHS) implemented this statute by issuing Health Care Financing Administration (HCFA) Transmittal No. IM 86-2. Pet. App. A47-A53. The Transmittal instructs SSI States how to apply the new provision. *Id.* at A50. The Transmittal also provides that, because Medicaid eligibility is not linked to SSI eligibility in 209(b) States, 209(b) States may elect to include part or all of an individual's 1984 Social Security benefits increase, as well as subsequent cost-of-living increases, in determining whether the individual remains eligible for Medicaid. *Id.* at A50-A51.

3. Marietta Darling filed suit against the Secretary of HHS, HCFA, and the Director of Missouri's Department of Social Services, to challenge HCFA's interpretation of Section 12202. Darling is a disabled widow of a former Social Security covered wage earner who, as a result of the 1984 increases, ceased to be eligible for both SSI and Medicaid under Missouri's Section 209(b) plan. She sought class certification of a class of disabled widows and

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[2] Section 12202 provides that a disabled widow or widower who lost SSI/SSP entitlement as a result of the 1984 Social Security increases "shall be deemed for purposes of [Medicaid] to be an individual with respect to whom benefits under this title are paid * * * if he or she * * * * * would be eligible for benefits under this title * * * if the amount of the [1984] increase * * * in his or her widow's and widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits * * *, were disregarded." 100 Stat. 290, (codified at 42 U.S.C. 1383c(b) (Supp. V 1987)). Both SSI benefits and SSP payments are "benefits under this title."

widowers in 209(b) States (except Illinois)[3] who have been or may be harmed by HCFA's position in Transmittal No. IM 86-2. Pet. App. A10, A23.

The district court certified a class of eligible disabled widows and widowers in thirteen 209(b) States (Pet. App. A23-A26), seven of which had decided not to disregard the 1984 Social Security benefit increases (and subsequent cost-of-living adjustments) in Medicaid eligibility determinations. *Id.* at A25 & n.4. The district court then entered summary judgment for the plaintiffs, and held that the disabled widows and widowers "deemed" to be receiving SSI benefits for purposes of Medicaid should also be "deemed" to be receiving no more income than would qualify for SSI benefits – an interpretation that required disregarding the 1984 increases in Section 209(b) States to the extent necessary to reduce their incomes to the SSI eligibility level. *Id.* at A21, A31, A36. The court concluded that "defendants offer a more plausible literal meaning of the controlling language but that plaintiff offers a much more plausible statement of Congressional intent, given the full context of § 12202 and the absence of any reasonable basis for Congress to discriminate in favor of widows and widowers in SSI states." *Id.* at A31. The court emphasized that neither the statutory definition of "eligible" individuals (42 U.S.C. 1383c(b)(2) (Supp. V 1987)) nor the requirement of notice to potential beneficiaries (42 U.S.C. 1383c(b) note (Supp. V 1987)) distinguishes between SSI States and 209(b) States (Pet. App. A34); the court also concluded that the Secretary's interpretation was not entitled to deference because the congressional intent to ameliorate the adverse Medicaid effects of the 1984 increases was clear, and because the HCFA

[3] The certification request did not include residents of Illinois, a 209(b) State, because relief similar to that sought in this case had already been afforded in *Hill* v. *Duffy*, No. 87-5208 (S.D. Ill. July 31, 1987). Pet. App. A11 n.5, A23.

Transmittal itself gave 209(b) States the option of disregarding the effects of the 1984 increases. *Id.* at A34-A35.

Accordingly, the district court ordered HHS and HCFA to withdraw Transmittal No. IM 86-2 "insofar as it purports to give an option to 209(b) states to disregard the relief mandated by § 12202." Pet. App. A36. It also required HHS and HCFA to notify Section 209(b) States that they must tender full relief under that Section to eligible individuals, and it extended the time for applying for such relief by six months. Pet. App. A36.

4. The court of appeals affirmed. Agreeing with the district court's analysis (Pet. App. A13), it held that "a strict application of the literal language * * * would defeat the overall purpose for which the statute was enacted * * * and result in inequitable and discriminatory treatment in the various states of the Union." *Id.* at A14. Like the district court, the court of appeals relied on the general purpose of the provision to ameliorate the harshness of the effect of the 1984 increases on Medicaid eligibility and on the fact that neither the definition of eligible individuals nor the notice provision distinguishes between SSI States and 209(b) States. *Id.* at A13-A15. The court noted that it accepted "as a general principle the * * * claim that the courts must defer to an agency's construction of a statute it administers," but the court concluded that "[t]he interpretation of section 12202 urged by the [State and the federal government] is one * * * unintended by Congress and one which fails to give full meaning to the statute's notice provisions which reflect Congress's intent that relief should reach all eligible disabled widow(er)s who were adversely affected by the 1984 increases." *Id.* at A17-A18.

ARGUMENT

We agree with petitioner that the court of appeals' decision is incorrect. Because the decision will have a limited

impact, however, and because it does not conflict with any other decision, review by this Court is not warranted.[4]

1. For the reasons given in the petition for certiorari, we agree that, in refusing to "appl[y] * * * the literal language of the statute" (Pet. App. A14), or to defer to the Secretary's " 'plausible' " interpretation of the statutory language (*id.* at A13), the court of appeals violated established principles of statutory construction and agency deference.[5] Moreover, the importance of applying statutory language as written, even when such application leads to results the court might disapprove, has been repeatedly reaffirmed by this Court. See *Board of Governors of the Federal Reserve System* v. *Dimension Financial Corp.*, 474 U.S. 361, 373-374 (1986); *TVA* v. *Hill*, 437 U.S. 153, 194-195 (1978). The fact that neither the eligibility definition nor the notice provision draws a distinction between 209(b) States and SSI States does not eliminate the fact that the plain language of the provision deems an individual to be an SSI recipient for Medicaid purposes regardless of the 1984 increase—and such status has automatic consequence for Medicaid eligibility only in SSI States.

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[4] The federal parties are respondents pursuant to Rule 12.4 of the rules of this Court.

[5] See *K Mart Corp.* v. *Cartier, Inc.*, 108 S. Ct. 1811, 1817 (1988) ("[i]f the agency regulation is not in conflict with the plain language of the statute, a reviewing court must give deference to the agency's interpretation of the statute"); *Connecticut Dep't of Income Maintenance* v. *Heckler*, 471 U.S. 524, 532 (1985) (interpretation of a statute by the agency charged with its administration is entitled to substantial deference); *FEC* v. *Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 39 (1981) (to sustain the agency's interpretation, "it is not necessary for a court to find that the agency's construction was the only reasonable one or even the reading the court would have reached if the question initially had arisen in a judicial proceeding").

Furthermore, as petitioner points out (Pet. 19-21), the court of appeals' conclusion that "a strict application of the literal language of the statute would defeat the overall purpose for which the statute was enacted" (Pet. App. A14), is premised on several mistaken conclusions of law. For example, the federal parties and the State argued below that Congress had been primarily concerned with the *availability* of Medicaid to individuals who had received increased Social Security benefits—that is, Congress apparently was concerned with those individuals who had lost all access to Medicaid by virtue of their loss of SSI status. See S. Rep. No. 146, 99th Cong., 1st Sess. 1, 331 (1985) ("As a result of the [1984] increase, some beneficiaries lost eligibility for Supplemental Security Income (SSI) and, consequently, Medicaid."). However, in 209(b) States, individuals could still become eligible for Medicaid by spending down to the state eligibility standard.

The court of appeals rejected this argument on the ground that the 1984 increases "substantially impair[ed] their actual ability to meet the spend-down without foregoing basic necessities of life." Pet. App. A15. The court failed to recognize, however, that the 1984 increases in benefits actually augmented the ability of 209(b) State residents to meet a spend-down; the increases left these individuals with increased cash benefits with which to meet any spend-down and still maintain their eligibility for Medicaid. By contrast, in an SSI State without a "medically needy" program,[6] even a small increase in Social Security benefits could mean total

[6] States have the option of providing Medicaid to the "medically needy"—"persons lacking the ability to pay for medical expenses, but with incomes too large to qualify for categorical assistance." *Schweiker*, 453 U.S. at 37. See also 42 U.S.C. 1396a(a)(10)(C).

loss of the more valuable Medicaid benefits, with no recourse to a spend-down.[7]

The court of appeals was also mistaken in relying on its perception that a strict application of the language of Section 12202 would give more relief to widows and widowers in SSI States than it would give to widows and widowers in 209(b) States. The court concluded that Congress could not have intended this result. Pet. App. A14. However, the 209(b) option itself explicitly provides that 209(b) States may have more stringent eligibility standards than SSI States. Nothing in Section 12202, or its legislative history, indicates that Congress intended to override the fundamental distinction between 209(b) States and SSI States.

2. Although we believe that the court of appeals' decision is incorrect, we do not agree that this case warrants review. The court of appeals' decision presents no conflict with the decision of any other court concerning Section 12202 of COBRA.[8] Moreover, the impact of the decision on the Medicaid program is limited. The district court noted that, at the time of its decision, the total number of affected

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[7] Even in SSI States with "medically needy" programs, the loss of SSI benefits could have a significant adverse effect because the recipient would no longer be eligible for Medicaid as one of the "categorically needy"; categorically needy Medicaid programs are generally more comprehensive and inclusive than medically needy Medicaid programs. Thus, in such States, if an individual becomes eligible for Medicaid as medically needy instead of categorically needy, he or she might qualify for a service package that is more limited than that provided to the categorically needy. It is also possible that inclusion of the 1984 increases could prevent the disabled widow or widower from being eligible for the medically needy program.

[8] To be sure, however, in view of the district court's certification of all affected disabled widows and widowers in 209(b) States (except Illinois), a split in the circuits on this issue is unlikely to occur.

disabled widows and widowers, in States besides Illinois, was 578 individuals. Pet. App. A25.[9] Petitioner suggests that the court of appeals' decision will have an impact in other contexts and will eviscerate the distinction between 209(b) States and SSI States. Pet. 22-23. Although such a result would be a matter of concern, we believe that any similar issues in other contexts can be addressed on their own merits if and when they arise. Because the court of appeals' decision in this case will have a limited impact, review by this Court is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General
STUART M. GERSON
Assistant Attorney General
ANTHONY J. STEINMEYER
MICHAEL E. ROBINSON
Attorneys

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[9] The figure is the number of individuals in the seven 209(b) States (besides Illinois) that declined to disregard the 1984 increases.

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